

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1946V

UNPUBLISHED

GLEND A KELLETT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 23, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Emily H. Manoso, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On December 23, 2019, Glenda Kellett filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered Guillain-Barré Syndrome (GBS) caused-in-fact by the influenza vaccine she received on December 31, 2016. Petition at ¶¶ 2, 32. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 9, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her GBS. On May 19, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded compensation in the amount of \$120,000.00 for her actual pain and suffering, \$13,136.72 for expenses expected to be incurred during the first year after Judgment as described in the life care

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

plan and illustrated in the chart attached at Tab A, and an amount sufficient to purchase an annuity contract as described in II.B. of the Proffer. Proffer at 2-3. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award the following:**

- A. A lump sum in the amount of \$133,136.72, representing compensation in the amounts of \$120,000.00 for actual pain and suffering and \$13,136.72 for unreimbursable expenses during the first year after Judgment, in the form of a check payable to Petitioner; and**
- B. An amount sufficient to purchase the annuity contract described in Section II.B of the Proffer, representing compensation for additional unreimbursable expenses.**

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

GLENDA KELLETT,

Petitioner,

v.

**SECRETARY OF HEALTH AND HUMAN
SERVICES,**

Respondent.

No. 19-1946V

**Chief Special Master Corcoran
ECF**

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On October 8, 2020, the Secretary of Health and Human Services (“respondent”) filed his Rule 4(c) report concluding that petitioner suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986, as amended, **42 U.S.C. §§ 300aa-1** to -34, and on November 18, 2020, the Chief Special Master issued a Ruling on Entitlement, finding petitioner entitled to compensation. *See* ECF Docs. No. 17, 20. Specifically, based on respondent’s recommendation, the Court found petitioner entitled to compensation for Guillain-Barré syndrome and related sequelae that she sustained following the administration of an influenza vaccination on December 31, 2016, and that petitioner’s claim satisfies the requirements necessary to qualify as a Table injury under the Vaccine Injury Table. **42 C.F.R. §§ 100.3(a)(XIV)(D), (c)(15)**. Respondent now proffers that petitioner receive an award as follows:

I. Items of Compensation

A. Life Care Items

Respondent engaged life care planner Laura E. Fox, MSN, BSN, RN, CNLCP, and petitioner engaged rehabilitation counselor Roberta Hurley, to provide an estimation of

petitioner's future vaccine-injury related needs. For the purposes of this proffer, the term "vaccine related" is as described in the respondent's Rule 4(c) Report. All items of compensation identified in the life care plan are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Glenda Kellett, attached hereto as Tab A. Respondent proffers that petitioner should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

B. Pain and Suffering

Respondent proffers that petitioner should be awarded \$120,000.00 in actual and projected pain and suffering. This amount reflects that any award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a combination of lump sum payments and future annuity payments as described below, and request that the Chief Special Master's decision and the Court's judgment award the following:¹

A. A lump sum payment of \$133,136.72, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$13,136.72) and pain and suffering (\$120,000.00), in the form of a check payable to petitioner, Glenda Kellett.

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

B. An amount sufficient to purchase an annuity contract,² subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A, attached hereto, paid to the life insurance company³ from which the annuity will be purchased.⁴ Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity, which annuity shall make payments directly to petitioner, Glenda Kellett, only so long as petitioner is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual, or other installments. The "annual amounts" set forth in the chart at Tab A describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment.

² In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

³ The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

⁴ Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all life care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow as follows: four percent (4%) compounded annually from the date of judgment for all items. Petitioner agrees.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she, Glenda Kellett, is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Glenda Kellett's death.

3. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

- | | | |
|----|--|---------------------|
| A. | Lump Sum paid to petitioner, Glenda Kellett: | \$133,136.72 |
| B. | An amount sufficient to purchase the annuity contract described above in section II.B. | |

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

TRACI R. PATTON
Assistant Director
Torts Branch, Civil Division

s/Emily H. Manoso
EMILY H. MANOSO
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 305-3912
Email: Emily.H.Manoso@usdoj.gov

Dated: May 19, 2022